

**NS**  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

**FEE RECEIVED**  
AUG 31 2007

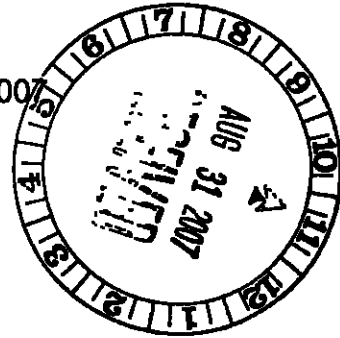
220186

**SURFACE  
TRANSPORTATION BOARD**

**John M. Scheib  
General Attorney**

Direct Dial Number  
(757) 629-2831  
Fax (757) 629-2607

August 30, 2007



Via DHL Express

Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re Docket No. AB-290 (Sub-No. 298X) Norfolk Southern Railway Company –  
Discontinuance of Service and Reclassification of Track – Windber,  
Somerset County, Pennsylvania

Dear Mr. Williams:

Enclosed for filing with the Board in the subject proceeding are an original and ten copies of Norfolk Southern Railway Company's Notice of Exemption in the captioned docket. Also, enclosed is a check for the filing fee in the docket

Please acknowledge receipt of this filing on the enclosed copy of this letter and return it to me in the self-addressed, stamped envelope.

Yours very truly,

*John M. Scheib*  
John M. Scheib

Enclosures

**ENTERED**  
Office of Proceedings  
AUG 31 2007  
Part of  
Public Record

**FILED**  
AUG 31 2007  
**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

AB-290 (Sub-No. 298X)

NORFOLK SOUTHERN RAILWAY COMPANY

- DISCONTINUANCE OF SERVICE AND RECLASSIFICATION OF TRACK

WINDBER, SOMERSET COUNTY, PENNSYLVANIA

VERIFIED NOTICE OF EXEMPTION

John M. Scheib  
General Attorney  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510  
(757) 629-2831

Attorney for  
Norfolk Southern Railway Company

ENTERED  
Office of Proceedings

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SURFACE  
TRANSPORTATION BOARD

Dated: August 30, 2007

Before The  
Surface Transportation Board

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AB-290 (Sub-No. 298X)

Norfolk Southern Railway Company

– Discontinuance of Service and Reclassification of Track –

Windber, Somerset County, Pennsylvania

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Verified Notice of Exemption

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COMES NOW Norfolk Southern Railway Company ("NSR") and files this Notice of Exemption from regulation under 49 U.S.C. §10903, pursuant to the provisions of 49 U.S.C. §10502 and 49 C.F.R. §1152.50, to permit NSR's discontinuance of service over a line of railroad between approximately Milepost QS 14.40 and Milepost QS 16.20 in Windber, Somerset County, Pennsylvania, a distance of approximately 1.8 miles (the "Line").

Pursuant to the Board's regulations at 49 C.F.R. §1152.50, NSR states as follows:

**Certifications Regarding Lack of Traffic or Service Complaints – 49 C.F.R. §§1152.50(b) and (d)(2)**

As the attached certification of R. A. Bartle, General Manager Northern Region, confirms, no traffic has originated, terminated or moved overhead on this Line for at

least two years, and no complaint concerning cessation of rail service over this Line is pending with the Board or a U. S. District Court or has been decided in favor of a complainant within the two-year period prior to the filing of this Notice of Exemption.

**Effective Date, Consummation Date – 49 C.F.R. §1152.50(d)(2)**

The effective date, and earliest consummation date, of the NSR discontinuance of service over the Line will be October 22, 2007.

**General Corporate Information – 49 C.F.R. §1152.22(a)(1-2) and (7)**

The party filing this notice of exemption is NSR, a Virginia corporation. NSR is a common carrier by railroad subject to STB jurisdiction under the Interstate Commerce Commission Termination Act (49 U.S.C. Subtitle IV, Chapter 105) (Interstate Transportation). The representative to whom correspondence with respect to this Notice of Exemption may be sent is:

John M. Scheib  
General Attorney  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510  
(757) 629-2831

**Description of the Line and the Relief Sought – 49 C.F.R. §1152.22(a)(3-4 and 8)**

The relief sought in this docket is an exemption, pursuant to the class exemption provisions of 49 C.F.R. §1152.50, from the prior approval requirements of 49 U.S.C. §10903 for NSR's discontinuance of service over the Line. The Line that is the subject of this Notice of Exemption is located between approximately Milepost QS 14.40 and Milepost QS 16.20 in Windber, Somerset County, Pennsylvania, a distance of

approximately 1.80 miles. This short track has a connection with NSR on one end and is connected on the other end to rail property that was formally abandoned. No local traffic has moved over this Line segment for more than two years. No overhead traffic has moved over the Line. No railroad customer will lose railroad service as a result of the discontinuance of service over this Line. In fact, the discontinuance sought will further the aims of a potential rail shipper in the area, and that shipper has expressed its support for this Notice in a letter, which is attached hereto as Exhibit 1.

In contrast, NSR seeks this discontinuance authority so that the Line can be used as private track. NSR intends to enter into an arrangement with the mining company, its subsidiary or affiliate, regarding the Line, once it is private track, and regarding the previously abandoned line. The mining company seeks to use the Line, and the previously abandoned line for its own rail purposes at a coal mine in the area that it intends to reopen. Removing regulatory barriers by granting this exemption to permit this arrangement will facilitate the reopening of the mine, which is in the public interest of meeting the nation's energy needs.

Because NSR intends to enter into an arrangement with the mining company, its subsidiary or affiliate, to use the Line as private track for continued rail purposes, NSR requests exemptions from any applicable requirement of 49 U.S.C. 10904 (offer of financial assistance, including an offer for a subsidy), of 49 U.S.C. 10905 (public use conditions), and of 16 U.S.C. 1247 (trail use conditions). *See e.g., STB Docket No. AB-999X, Caldwell County Railroad Co.—Discontinuance of Service Exemption—In Caldwell County, NC, (served July 9, 2007) (holding that STB does not consider offers*

of financial assistance to acquire the line, trail use requests, and requests for public use conditions in a discontinuance proceeding); STB Docket No. AB-290 (Sub No. 280X), *The Cincinnati, New Orleans and Texas Pacific Railway Company – Abandonment Exemption – In Roane County, TN* (served February 23, 2007) (granting waiver from offer of financial assistance and public use conditions where rail service will be preserved on private track).

A map showing the Line over which service will be discontinued, other rail lines in the area, highways, and population centers is attached as Exhibit 2 to this Notice.

The Line traverses United States Postal Service ZIP Code 15963 and includes the stations of Scalp Level, Shade Creek and Windber Jct.

**Suitability of the Line for Other Public Purposes – 49 C.F.R. 1152.22(e)(4)**

NSR is not aware of any restriction on the title to the right-of-way that would affect the transfer of title or the use of property for other than rail purposes but will provide full title information promptly if it receives a proposal to acquire the property for public purposes.

**Environmental and Historic Reports; Certifications – 49 C.F.R. §1105.7, §1105.8 and §1105.11**

Because this is an exemption for discontinuance, environmental and historical reports are not required. See e.g., *STB Docket No. AB-297 (Sub-No. 103X), Columbus and Greenville Railway Company--Discontinuance of Service Exemption--in Greenwood, MS*, at n.2 (served July 3, 2007).

**Statement Concerning Federally-Granted Right-of-Way – 49 C.F.R. §1152.50(d)(1)**

Based on information in the possession of NSR, the Line does not contain federally-granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

**Service and Newspaper Notice Requirements Certification - 49 C.F.R. §1152.50(d)(1-2) and §1105.12**

As stated in the attached certification, NSR certifies that the service and notice requirements of 49 C.F.R. §1152.50(d)(1)(certain government agencies) and 49 C.F.R. §1105.12 (newspaper notice) have been complied with for this Notice of Exemption.

**Labor Protection – 49 C.F.R. §1152.50(d)(2)**

Since the Line to be discontinued has been out of service for over two years, NSR believes no employees will be adversely affected by the discontinuance of service over this Line. However, as a condition to exercise the authority allowed under the exemption in this matter, NSR will accept the imposition of standard labor protective conditions as set forth in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

## **Conclusion**

For the foregoing reasons, NSR submits that the proposed discontinuance of service over the subject Line of railroad at Windber, Somerset County, Pennsylvania meets the criteria for the class exemption from the prior approval requirements of 49 U.S.C. §10903 under the Board's regulations at 49 C.F.R. §1152.50 and requests that the Board serve the appropriate Notice of Exemption.

Respectfully submitted,



Daniel M. Mazur  
Vice President  
Norfolk Southern Railway Company

Dated: August 30, 2007

Of Counsel:

John M. Scheib  
General Attorney  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510  
(757) 629-2831

Attorney for  
Norfolk Southern Railway Company



## CERTIFICATION

STATE OF PENNSYLVANIA .

**SS:**

**CITY OF HARRISBURG**

**R A Bartle makes oath and says that he is General Manager Northern Region for Norfolk Southern Railway Company; that the line between milepost QS 14.40 and milepost QS 16.20 in Windber, Somerset County, Pennsylvania, over which service is to be discontinued, is subject to his supervision and direction; that no local traffic has moved over the line for at least two years; that all overhead traffic has been rerouted over other lines; and that no formal complaint filed by a user of rail service on the line or a state or local government entity acting on behalf of such user regarding cessation of service over the line either is pending before the Surface Transportation Board or any U. S. District Court or has been decided in favor of the complainant within the two-year period.**

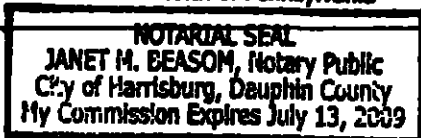
R. A. Bartle  
R. A. Bartle

Subscribed and sworn to before me  
this 9<sup>th</sup> day of August, 2007.

Janet M. Beason  
Notary Public

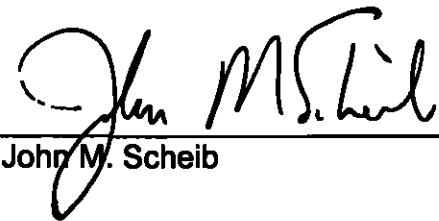
**My commission expires:**

**Commonwealth of Pennsylvania**



## CERTIFICATION

I hereby certify (1) that pursuant to 49 C.F.R. §1105.12, a notice of intent to discontinue rail service over the subject Line was published in *The Daily American*, Somerset, Pennsylvania, on August 22, 2007 (see Exhibit 3); and (3) that the notice required by 49 C.F.R. §1152.50(d)(1) was given (see Exhibit 4) with respect to this Notice of Exemption.



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John M. Scheib

Dated: August 30, 2007

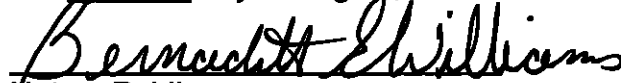
**VERIFICATION**

COMMONWEALTH OF VIRGINIA :  
: SS.  
CITY OF NORFOLK :

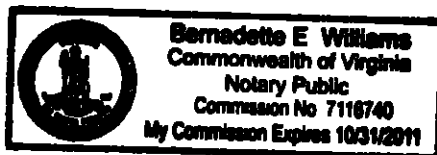
Daniel M. Mazur, being duly sworn, deposes and says that he is Vice President, Norfolk Southern Railway Company; that he is authorized to sign, verify, and file with the Surface Transportation Board the foregoing Notice of Exemption in AB- 290 (Sub-No. 298X) on behalf of Norfolk Southern Railway Company; that he has carefully examined all of the statements contained in said Notice of Exemption; that he has knowledge of the matters set forth therein; and that all such statements made and matters set forth are true and correct to the best of his knowledge, information, and belief.

  
Daniel M. Mazur

Subscribed and sworn to before me  
this 27<sup>th</sup> day of August, 2007.

  
Notary Public

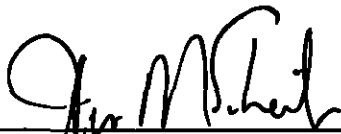
My commission expires: \_\_\_\_\_



[SEAL]

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Exemption was served upon Wendell F. Holland, Chairman, Pennsylvania Public Utilities Commission; Pennsylvania Department of Transportation, Bureau of Rail Freight, Port & Waterways; U. S. Department of Agriculture, Chief of the Forest Service; Regional Director, National Park Service, Northeast Region; Ms. Jan Matthews, Associate Director, U. S. Department of the Interior-National Park Service; and the United States Department of Defense (MTMCTEA); on August 30, 2007, by first class mail, postage prepaid

  
\_\_\_\_\_  
John M. Scheib



# ROSEBUD MINING COMPANY

301 Market Street Kittanning, PA 16201  
Phone: (724) 545-6222 FAX: (724) 543-6375  
Web Site [www.rosebudmining.com](http://www.rosebudmining.com)

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August 27, 2007

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

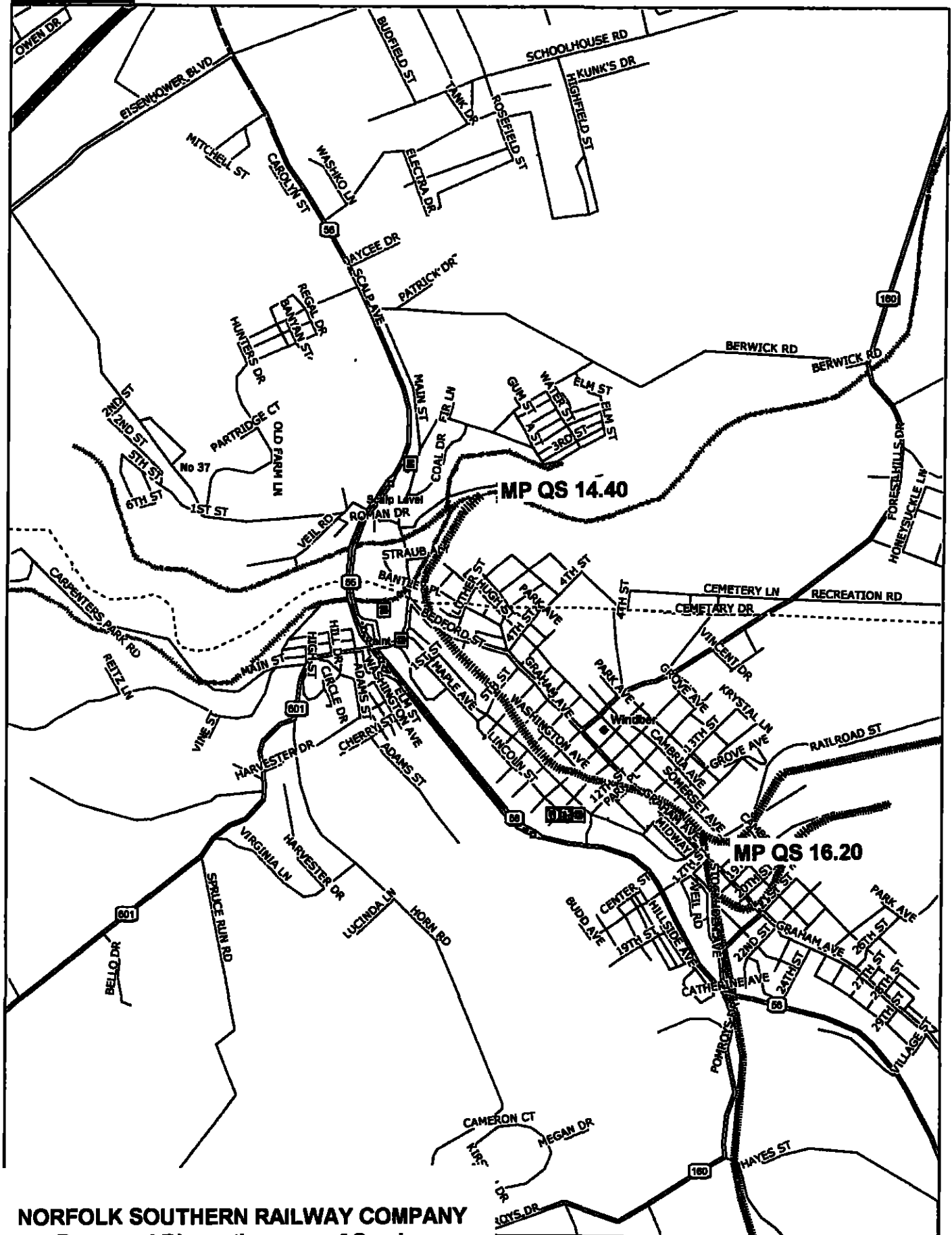
Re: AB-290 (Sub-No. 298X) Norfolk Southern Railway Company – Discontinuance  
and Reclassification of Track – Windber, PA

Dear Mr. Williams:

On behalf of Rosebud Mining, I submit this letter in support of Norfolk Southern Railway Company's Notice of Exemption to discontinue service over 1.8 miles of track in Windber, Pennsylvania. Rosebud Mining owns the mine that was formerly known as Bethlehem #78, and accordingly is the only potential rail shipper on the line. The discontinuance and reclassification as private track of this line will advance Rosebud's efforts to reopen this mine to meet the Nation's energy needs. I encourage you to approve the discontinuance and reclassification of this track as expeditiously as possible.

Sincerely,

J. Clifford Forrest  
President



**NORFOLK SOUTHERN RAILWAY COMPANY**  
**Proposed Discontinuance of Service**  
**Milepost QS 14.40 - Milepost QS 16.20**  
**Windber, Somerset County, Pennsylvania**

# Proof of Publication of Notice in Daily American

Commonwealth of Pennsylvania)  
County of Somerset ) ss  
Warren I Koppenhofer, Jr

... being duly sworn, says That he is editor, general manager, advertising director of the Daily American, a newspaper of general circulation, published at 334 West Main Street, in the Borough of Somerset, County of Somerset and State of Pennsylvania

That said newspaper was established as a daily newspaper of general circulation on the First day of July, 1929, since which date said newspaper has been published daily in the Borough of Somerset, except Sundays, that a copy of the printed notice, hereto attached, is exactly as the same was printed and published in the regular edition of the Daily American, published on the following dates, viz:

August 22, 2007

That affiant further deposes and declares that he is not interested in the subject matter of the aforesaid notice of publication and that all allegations in the foregoing statement as to time, place and character of publication are true

Sworn to and subscribed before me this

22nd day of

August

*Barbara Gnagay*  
Notary Public

October 25, 2009

My Commission Expires

## COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Barbara Gnagay, Notary Public  
Somerset Boro, Somerset County  
My Commission Expires Oct 25, 2009

Copy of Notice of Publication

### NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

Norfolk Southern Rail-  
way Company, gives  
notice that on or about  
August 31, 2007, it  
intends to file with the  
Surface Transportation  
Board (STB), Wash-  
ington, DC, 20423, a  
notice of exemption  
under 49 U.S.C. 10502  
from the prior approval  
requirements of 49  
U.S.C. 10903, permit-  
ting the discontinu-  
ance of service over a  
1.80-mile line of rail-  
road between milepost  
QS 14.40 and milepost  
QS 16.20 in Windber,  
Somerset County,  
Pennsylvania, which  
traverses through Unit-  
ed States Postal Ser-  
vice ZIP Code 15963,  
and includes the sta-  
tions of Scalp Level.

## STATEMENT OF ADVERTISING COSTS

Notice of Intent to Discontinue Rail Service

8-7-L-22-2

To Daily American, Somerset

For publishing the notice or advertisement attached heretofore the above stated dates	\$ 193 51
Probatng same	\$ 5 00
Total	\$ 198 51

Shade Creek and Windber Jct. The proceeding will be docketed as No. AB-290 (Sub-No. 298X). Appropriate offers of financial assistance to continue rail service can be filed with the STB. However, Norfolk Southern Railway Company also seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures). Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the STB. However, because this is a discontinuance of service proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 105.6(c) and 105.8. Any original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the

STB's Office of the Secretary, 395 E Street SW, Washington, DC 20423-0001. [See 49 CFR 1104.1(a) and 1104.3(a)]. One copy must be served on applicant's representative. [See 49 CFR 1104.12(a)]. Persons seeking further information concerning discontinuance procedures, offers of financial assistance, public use or trails use may contact the Board's Office of Congressional and Public Services at (202) 245-0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Copies of any comments or requests for conditions should be served on the applicant's representative John M. Scheib, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-9241, (757) 629-2831.

## Publisher's Receipt for Advertising Costs

The publisher of the Daily American, a daily newspaper, hereby acknowledges receipt of aforesaid advertising and publication costs, and certifies that the same have been fully paid

OFFICE  
334 West Main Street  
Somerset, Pa  
Established 1929

Daily American, Somerset,  
Publisher of Daily American, a Newspaper

by

*Barbara Whitley*

I hereby certify that the foregoing is the original Proof of Publication and Receipt for the advertising costs in the subject matter of said notice

Attorney for



  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

Exhibit 4

**John M. Scheib**  
**General Attorney**

(757) 629-2831

August 21, 2007

Mr. Wendell F. Holland, Chairman  
Pennsylvania Public Utilities Commission  
P. O. Box 3265  
Harrisburg, PA 17120

Pennsylvania Department of Transportation  
Bureau of Rail Freight, Port & Waterways  
Keystone Building  
400 North Street  
Harrisburg, PA 17120

United States Department of Defense  
Military Traffic Management Command  
Transportation Engineering Agency (MTMCTEA)  
Railroads for National Defense Program  
720 Thimble Shoals Blvd., Suite 130  
Newport News, VA 23606-2574

Regional Director  
National Park Service, Northeast Region  
U. S. Custom House  
200 Chestnut Street, Fifth Floor  
Philadelphia, PA 19106

Ms. Jan Matthews, Associate Director  
U. S. Dept. of the Interior-National Park Service  
Cultural Resources, Room 3126  
1849 C Street, N.W.  
Washington, DC 20240

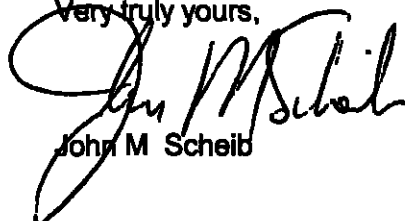
U. S. Department of Agriculture  
Chief of the Forest Service  
Sidney R. Yates Federal Building  
1400 Independence Ave., SW  
Washington, DC 20250-0003

Re: STB Docket No. AB-290 (Sub-No. 298X), Norfolk Southern Railway Company –  
Discontinuance of Service – Somerset County, PA

Ladies and Gentlemen:

Pursuant to 49 CFR 1152.50(d)(1) Norfolk Southern Railway Company (NSR), hereby gives notice that on or about August 31, 2007, it will file with the Surface Transportation Board a notice of exemption from regulation in accordance with the exemption regulations set forth at 49 CFR Part 1152, Subpart F. That notice of exemption will permit NSR's discontinuance of service over a 1.80-mile line of railroad lying between milepost QS 14.40 and milepost QS 16.20 in Windber, Somerset County, Pennsylvania (see attached map). No revenue traffic has originated or terminated or moved overhead on the line over which service is to be discontinued for more than two years. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

Very truly yours,

  
John M. Scheib

JMS:kch  
Enclosure